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FILED

JUL 31 2008

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY DEPUTY

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 11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA
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 14 UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ2186
 Plaintiff,)
 v.)
 15 JOSE LOPEZ-GUTIERREZ,)
 Defendant.)
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**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and James P.
 19 Melendres, Assistant United States Attorney, and defendant JOSE LOPEZ-GUTIERREZ, by and
 20 through and with the advice and consent of Jennifer Coon, counsel for defendant, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
 26 and (v)(II).

27 //

28 JPME:rp:7/23/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government not later than five business days
 3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
 5 before **August 18, 2008**.

6 4. The material witnesses, Gerardo Martinez-Blanco, Maria De Jesus Zavala-Paramo,
 7 and Veronica Gonzalez-Rangel, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;
 9 b. Entered or attempted to enter the United States illegally on or about
 10 July 15, 2008;

11 c. Were found in a vehicle driven by defendant near Potero, California and that
 12 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right
 13 to enter or remain in the United States;

14 d. Were paying up to \$2,000 to defendant ^{or others} to be brought into the United States
 15 illegally and/or transported illegally to their destination therein; and,

16 c. May be released and remanded immediately to the Department of Homeland
 17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
 19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
 20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
 21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
 23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
 25 regarding any statements made by the material witness(es) provided in discovery, and such testimony
 26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
 27 of (an) unavailable witness(es); and,

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1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

16 Dated: 2/3/08

JAMES P. MELENDRES
Assistant United States Attorney

Dated: 7/24/08

Jennifer C.
JENNIFER COON
Defense Counsel for Jose Lopez-Gutierrez

21 Dated: 7/24/08

JOSE LOPEZ GUTIERREZ
JOSE LOPEZ-GUTIERREZ
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown.

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 13/08

United States Magistrate Judge

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Material Witness(es) And Order Thereon in
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